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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RUBEN MARTINEZ,

Defendant and Appellant.

G054953

(Super. Ct. No. 14NF4890)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Cheri T. Pham, Judge. Affirmed.

Michelle May Peterson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Julie L. Garland, Assistant Attorney General, Michael Pulos and Nora S. Weyl, Deputy Attorneys General, for Plaintiff and Respondent.

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Ruben Martinez appeals from a 50-years-to-life sentence following his conviction for first degree murder of his mother's boyfriend, Maximino C. (Pen. Code, § 187; all further statutory citations are to the Penal Code, unless stated otherwise.) Martinez argues the trial court should have initiated competency proceedings based on statements he and his counsel made before sentencing. He contends the court erred in admitting a statement he made to police officers that he had taken methamphetamine the day before the murder because toxicology tests taken shortly after his arrest showed he had no detectable level of amphetamine in his blood. Finally, he contends there was insufficient evidence he committed the murder with premeditation and deliberation. For the reasons stated below, we reject his claims and affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

Martinez's mother, Veronica S., testified she had been dating Maximino about six years before he was murdered on November 16, 2014. A week before the murder, Martinez behaved strangely, complained of headaches, and appeared distracted. Martinez's brother, Roger M., testified Martinez was whispering to himself and more quiet than usual. Roger believed Martinez might have been under the influence of "something." Martinez's symptoms persisted, and Veronica, Maximino, and Martinez discussed taking Martinez to the hospital.

On November 16, 2014, at around 4:00 p.m., Maximino drove Veronica, Martinez, Martinez's girlfriend, Cristal B., and Martinez's son to a nearby hospital. When Martinez learned he had to wait several hours before he could be examined, he left the hospital alone on foot. Veronica and Cristal tried to locate Martinez, but could not find him. Because Veronica's cell phone died, she could not call Maximino to pick them up, so they walked home.

Later that evening, Maximino called Veronica to see if she wanted to have dinner. Veronica agreed and waited for Maximino in the kitchen with Martinez and

Cristal. When Maximino pulled up to her house, Veronica went into her room to get ready. Martinez and Cristal remained in the kitchen.

Roger was in the living room when he heard Maximino's truck arrive outside. Roger saw Martinez and then Cristal go outside through the front door. Less than a minute later, Cristal returned. She said something which caused Roger to worry that either Martinez or Maximino might be getting hurt.

Roger walked outside and saw Maximino bleeding and lying in the street. Martinez was standing on the sidewalk facing Maximino; no one else was nearby. Martinez had what looked like blood on his shorts. Roger called 911. When sheriff's deputies arrived on the scene, Roger told them he thought Martinez had hurt Maximino. At trial, Roger stated he believed someone other than Martinez stabbed Maximino.

Maria R. testified that at around 8:00 p.m., she was driving toward her parents' home when she saw a man – later identified as Maximino – standing by a truck with blood on his pants. She continued to her parents' home, but returned to the scene with her mother and sister. Maria saw Maximino on the ground next to his truck. While another woman called 911, Maria asked him “what had happened, who did this to him.” Maximino pointed at Martinez. Maria told the responding deputy sheriffs that Maximino had identified Martinez as the man who had stabbed him.

Sheriff's deputies observed that Martinez had blood on his hands and clothing. The deputies arrested Martinez and interviewed him at the police station early the next morning. Initially, Martinez denied any involvement in Maximino's murder. He claimed that after hearing Maximino's truck arrive outside, he walked outside and saw Maximino lying on the ground already bleeding. He told a lady to call an ambulance and held Maximino.

Later in the interview, Martinez told police that Maximino had “disrespected” his mother one time by the way he talked to her. Martinez also claimed he thought Maximino wanted to “take [him] out,” so he took out Maximino first. After

learning that Maximino had died, Martinez admitted he went into the truck and “stuck” Maximino about three times because Maximino had “disrespect[ed]” his mother. Martinez admitted the murder was not about something Maximino did that night. Martinez said he had used methamphetamine the day before the murder and had been using methamphetamine a lot lately, but in “little, basic” amounts.

An approximately eight-inch knife blade with no handle was on the ground eight to 10 inches from Maximino. A knife handle was found on the front passenger seat of Maximino’s truck, and a Swiss Army-style knife in the center console. The truck’s interior had multiple bloodstains.

An autopsy revealed Maximino died from blood loss after being stabbed five times, twice in the chest area, twice in the abdomen area, and once in the groin area. Maximino’s toxicology report revealed the presence of amphetamine, methamphetamine, and a blood alcohol level of approximately 0.16 percent. The amount of methamphetamine was potentially toxic and consistent with abuse.

In searching Veronica’s home, investigator’s recovered three knives from a partially opened kitchen drawer. In Martinez’s bedroom, the investigator recovered a butane torch and located 20 small baggies under the mattress. One baggie had a white residue consistent with cocaine or methamphetamine.

Martinez had blood on his hands and clothing. The blood on the shorts contained Maximino’s DNA, and the blood on Martinez’s left hand contained his and Maximino’s DNA. Martinez was a major contributor to the DNA collected from the knife handle. Apparent blood on the knife blade contained Maximino’s DNA.

Martinez’s toxicology report was negative for both alcohol and drugs. A forensic scientist testified it would be possible for a person to use methamphetamine and not have any detectable methamphetamine in their blood two days later. He also opined that negative side effects, including agitation, paranoia, and aggressiveness, can occur

from binging at “a high-dose level” over several days or from continuous long-term methamphetamine use.

Martinez testified on his own behalf. According to Martinez, when he heard Maximino’s truck pull up outside his home, he went outside, smoked a cigarette and walked over to the truck to speak to Maximino. After opening the truck door to say “hi,” Martinez noticed the interior was a “mess” and saw a kitchen-style knife lying on the floor by the passenger seat. Martinez got into the truck and briefly conversed with Maximino. Maximino asked in an “unusual manner” why Martinez had left his mother at the hospital. The two men started arguing and had a fistfight inside the truck. Martinez grabbed the knife that was lying on the floor and stabbed Maximino in the stomach two times. The handle of the knife broke off during the confrontation and Martinez dropped the knife handle. Maximino leaned back and kicked Martinez in the face.

Martinez exited the truck but stayed nearby because “there [was] no reason for me to leave.” The knife blade had been stuck in Martinez’s shirt, but it fell to the ground when he stepped out of the truck. Martinez regretted stabbing Maximino, held Maximino in his arms, and asked him if he was alright, but Maximino was nonresponsive. Martinez asked Roger to call an ambulance and waited until the ambulance and deputy sheriffs arrived. Martinez claimed he lied when he told investigators Maximino had disrespected his mother, explaining he did not initially tell investigators a fight had occurred because he was scared and tired.

An investigator with the district attorney’s office interviewed Veronica in November 2016. She told the investigator Maximino kept a kitchen-type knife in his truck that was about eight to 10 inches in length. She claimed Martinez and Maximino always seemed to get along and never had any problems.

The jury convicted Martinez of first degree murder, and found true the allegation that he personally used a dangerous or deadly weapon (§ 12022, subd. (b)(1)). The trial court found true a prior strike conviction (§ 667, subds. (d), (e)(1)), and a prior

prison term allegation (§ 667.5, subd. (b)). After denying a motion to strike the prior strike allegation, the court sentenced Martinez to 52 years to life in state prison.

II

DISCUSSION

A. The Trial Court Did Not Err By Failing to Initiate a New Competency Proceeding

Martinez contends the trial court erred in failing, sua sponte, to suspend criminal proceedings based on new evidence he was incompetent to be tried. We disagree.

1. Relevant Facts

Before trial began, defense counsel stated he had a doubt about Martinez's competency to assist in the preparation of his defense. The trial court suspended criminal proceedings and initiated competency proceedings. Two doctors evaluated Martinez for competency purposes, and based on their reports the court found Martinez competent to stand trial. Martinez does not challenge the initial finding of competency.

After the jury returned its verdict, but before sentencing, Martinez wrote a letter to the court. In the letter, Martinez claimed he was hearing voices in the month before the crime and "those voices had something to do with my actions that I did that night." Martinez claimed he was recently told he might be schizophrenic and bipolar. He denied killing anyone, asserting he only stabbed Maximino twice in the stomach during "mutural [sic] combat," and stated his belief that law enforcement had framed him for murder.

At the sentencing hearing, defense counsel argued Martinez's mental condition had "everything to do with what occurred that night." Counsel stated that throughout the two and a half years of working on the case, Martinez's attorneys suspected he had a mental condition because in conversations with him at the jail, "you can see that he was often responding and speaking to someone else who was not in the room." Defense counsel informed the trial court that shortly before trial, Martinez

accepted the fact that he had a mental illness. Counsel also stated that Martinez was not currently taking any drugs because the “voices are no longer threatening” and “[h]e has the voices under control.”

The trial court found insufficient evidence was presented at trial showing Martinez has a mental illness, and Martinez’s statements he had a mental illness were “self-serving.”

2. Analysis

Under California law, a person is incompetent to stand trial “if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.” (§ 1367, subd. (a).) Section 1368 states that if the trial judge at any time before judgment has a doubt about the mental competence of a defendant, the judge “shall state the doubt in the record and inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally competent.” (§ 1368, subd. (a).)

A defendant also is entitled to a competence hearing if the defendant presents substantial evidence of incompetence, even if the evidence is in conflict. (*People v. Young* (2005) 34 Cal.4th 1149, 1216.) “To raise a doubt under the substantial evidence test, we require more than ‘mere bizarre actions’ or statements, or even expert testimony that a defendant is psychopathic, homicidal, or a danger to him- or herself and others. [Citations.] Rather, the focus of the competence inquiry is on a defendant’s understanding of the criminal proceedings against him or her and the ability to consult with counsel or otherwise assist in his or her defense. [Citation.] Defendant’s trial demeanor is relevant to, but not dispositive of, the question whether the trial court should have suspended proceedings under section 1368. [Citation.]” (*People v. Mickel* (2016) 2 Cal.5th 181, 202.) “A trial court’s decision whether or not to hold a competence hearing is entitled to deference, because the court has the opportunity to observe the defendant during trial.” (*People v. Rogers* (2006) 39 Cal.4th 826, 847 (*Rogers*).) A new

competence hearing is required only upon substantial evidence of a change in circumstances or new evidence which casts “serious doubt on the validity” of the earlier competency finding. (*People v. Frye* (1998) 18 Cal.4th 894, 1005, disapproved on other grounds by *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) Failure to declare a doubt and conduct a hearing despite substantial evidence of incompetence warrants reversal of the judgment. (*Rogers, supra*, 39 Cal.4th at p. 847.)

Here, the record does not cast serious doubt on the earlier competency finding. No evidence was presented that Martinez’s mental state had deteriorated. Although Martinez was no longer taking medication, counsel explained Martinez stopped taking medication because his condition was under control. Additionally, although defense counsel argued at the sentencing hearing that Martinez’s mental illness should be a mitigating circumstance, counsel never suggested Martinez did not understand the criminal proceedings or could not assist in his defense. Indeed, Martinez’s trial testimony supported the defense theory of “mutual combat” self-defense. (Cf. *People v. Murdoch* (2011) 194 Cal.App.4th 230, 238-239 [substantial evidence casted doubt on defendant’s competence where (1) defendant asserted his defense was predicated on “fact” his victim was not a human and (2) medical reports stated defendant had stopped taking medication despite expert opinion that defendant’s competence was dependent on medication]) The fact that Martinez might have been diagnosed with schizophrenia and bipolar disorder is not dispositive. (See *People v. Halvorsen* (2007) 42 Cal.4th 379, 403 [statements by expert that defendant suffered from mental illness and exhibited erratic and psychotic behavior not substantial evidence of incompetence].) As the trial court found, there was insufficient evidence presented that Martinez suffered from a mental illness. The court also discredited Martinez’s statement he had a mental illness, and that credibility determination is accorded substantial deference “because the court has the opportunity to observe the defendant during trial.” (*Rogers, supra*, 39 Cal.4th at p. 847.) The evidence before the trial court, in short, did not amount to substantial evidence

requiring the court to suspend proceedings before entering judgment. Accordingly, we cannot conclude the court abused its discretion by failing to declare a doubt about Martinez's competence and ordering a new competence hearing.

B. The Trial Court Did Not Err in Allowing the Prosecution to Admit Martinez's Statement He Used Methamphetamine Despite His Negative Toxicology Report

Martinez contends the trial court prejudicially erred in allowing the prosecution to admit his statement that he had taken methamphetamine the day before the murder. He argues the statement had no relevancy to his mental state at the time of the murder because his toxicology tests showed he had no methamphetamine in his system at the time. Martinez's statement, however, was relevant and probative to his mental state at the time of the murder. An investigator found a baggie containing residue consistent with methamphetamine hidden in Martinez's bedroom. His brother testified Martinez appeared to be under the influence of a drug in the week before the murder. A forensic scientist testified it was possible a toxicology test would not detect methamphetamine in a person's blood even though the person had used methamphetamine two days earlier. The scientist also opined that continuous long-term use of methamphetamine could result in negative side effects, including agitation, paranoia, and aggressiveness. Finally, Martinez made the challenged statement to police officers shortly after he was arrested as a suspect in Maximino's murder. Even if the statement was a lie, it still was admissible to show consciousness of guilt – blaming his drug use for his killing. In sum, the court did not err in admitting Martinez's statement he had taken methamphetamine the day before the murder.

C. Substantial Evidence Supports the Jury's Finding of Premeditation and Deliberation

Finally, Martinez contends there was insufficient evidence to support the jury's finding that he committed first degree murder, specifically with respect to its finding that he committed the murder with premeditation and deliberation. When considering a challenge to the sufficiency of the evidence to support a conviction, “we

review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.]”” (*People v. Wyatt* (2010) 48 Cal.4th 776, 781.)

Evidence pertinent to a finding of premeditation and deliberation include (1) planning activity, (2) motive, and (3) manner of killing. (*People v. Perez* (1992) 2 Cal.4th 1117, 1125.)

Here, the jury could find premeditation and deliberation from evidence of planning activity, motive, and manner of killing.¹ Veronica testified Martinez was in the kitchen when she left to get ready to go to dinner with Maximino. The murder weapon was a kitchen-style knife, and a jury reasonably could infer that Martinez retrieved the knife from a kitchen drawer and brought the weapon with him when he went outside to confront Maximino. This shows planning activity. (See *People v. Gonzalez* (2012) 54 Cal.4th 643, 664 [bringing weapon to ambush site shows planning activity].) A reasonable jury also could find that Martinez attacked Maximino without provocation. Martinez admitted to officers he did not stab Maximino because Maximino had done something that night. (See *People v. Miller* (1990) 50 Cal.3d 954, 993 [“lack of provocation by the victims similarly leads to an inference that the attacks were the result of a deliberate plan rather than a ‘rash explosion of violence’”].) Martinez also had a preexisting motive to kill Maximino. As noted, Martinez claimed he stabbed Maximino not because of something that happened that night, but because Maximino previously had disrespected his mother. (Cf. *People v. Jackson* (1989) 49 Cal.3d 1170, 1200 [“the law does not require that a first degree murderer have a ‘rational’ motive for killing. Anger at the way the victim talked to him . . . may be sufficient.”].) Finally, the manner of

¹ The jury was instructed it could consider the effect of Martinez’s voluntary intoxication. i.e., his use of methamphetamine, in deciding whether he acted with premeditation and deliberation.

killing suggests premeditation. Martinez stabbed Maximino twice in the chest area with a knife. (See *People v. Anderson* (1968) 70 Cal.2d 15, 27 [“directly plunging a lethal weapon into the chest evidences a deliberate intention to kill”].) The evidence was sufficient to sustain the jury’s finding of premeditation and deliberation.

III

DISPOSITION

The judgment is affirmed.

ARONSON, ACTING P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.